IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No: 69 of 2001

Date of decision 7.9.2007

Nihal Chand **Petitioner**

Versus

State of H.P. **Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Petitioner: Ramesh Thakur, Advocate

For the Respondent: Mr. V.K.Verma, Additional Advocate General

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Deepak Gupta, J.(Oral)

This Criminal Revision is directed against the judgment of the learned Sessions Judge, Kullu and Lahaul Division at Kullu, dated 4.5.2001 whereby he has dismissed the criminal appeal No. 1 of 2001 filed by the appellant Nihal Chand against the judgment of the Chief Judicial Magistrate, Lahaul & Spiti, dated 15.11.2000, whereby he was convicted of having committed an offence punishable under Sections 41/42 of the Indian

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Forest Act and sentenced to undergo six months imprisonment.

The prosecution case in brief is that on 14.3.1999 at about 1.00 a.m. the police party accosted the accused near Seo-bag bridge on National Highway No. 21. The accused was driving tractor trolley No. HIE-429 towards Kullu. In the trolley there were 9 deodar sleepers. The accused did not possess any transit permit for the transportation of the aforesaid forest produce. The sleepers also did not bear any hammer marks to show that they have been legally felled. One Tej Ram was sitting on the tractor besides Nihal Chand. Timber was alleged to belong to Anup Ram. All the aforesaid persons were charged with having committed offence under Section 379 IPC read with Sections 41/42 of the Indian Forst Act. The learned trial court found the present petitioner guilty and the other two accused were acquitted. The appeal filed by the petitioner before the learned Sessions Judge has been dismissed. He, however, reduced the substantive sentence imposed upon the accused from 6 months to 3 months.

I have heard Mr. Ramesh Thakur, learned counsel for the accused-petitioner, and have also gone through the entire record of the case.

From a perusal of the evidence, especially the statements of PW-1 Santo Kumar, PW-5 Inspector Nihal Chand and PW-7, Chet Ram, it stands proved that the petitioner-accused was driving the tractor at the time when the same was stopped by the police. The only factor relied upon by the petitioner-accused is that the owner of the tractor has stated that he had not engaged Nihal Chand as driver of the tractor. The statement of this witness has rightly been discarded by both the courts below since he has told lies in court. On the one hand he has stated that he had gone to Assam in connection with his B.Ed. training on 14.3.1999 and remained there till July, 1999, but on the other hand it stands proved on record that on 20.3.1999 he had produced the documents of his tractor before the police and he took the tractor on sapurdari vide memo Ex.PW-1/D and executed the sapurdari bond Ex.P-1 on 20.3.1999.

The accused was found driving the tractor in which illicitly felled timber was being carried in the wee hours of the morning. At 1.00 a.m. it could not be

expected that any independent evidence would be available. Even otherwise, there is no reason to discard the evidence of the police witnesses. On the basis of the evidence led, both the courts below have rightly held that the prosecution has proved beyond shadow of doubt that on 14.3.1999 the petitioner-accused was transporting 9 illegally felled deodar scants on tractor No. HIE-429 being driven by him. He had no permit to transport the produce.

Learned counsel for the petitioner has prayed that the petitioner may be dealt with leniency. In my opinion, he has already been dealt with leniently by the learned Sessions Judge, who has reduced the substantive sentence from six to three months. In cases where the parties damage the environment, the courts, in my opinion, should in fact take a strict view. Keeping in view the great adverse impact which ecological degradation has on the public, the courts should be strict while dealing with such like offenders. There is no merit in this revision petition which is accordingly dismissed.

September 7, 2007(K) (Deepak Gupta), J.